

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLANT**

original

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77-6030

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CIVIL ACTION NUMBER

ANTHONY P. COZZA

Pro Se

PLAINTIFF

BP,

VS

COMPLAINT ✓

SECRETARY OF HEALTH, EDUCATION & WELFARE
DEPARTMENT OF HEALTH, EDUCATION & WELFARE
DEFENDENT

DATE: JUNE 14, 1977

BRIEF

NOTE: THIS COMPLAINT MAKES REFERENCE TO ORIGINAL
COMPLAINT CIVIL ACTION NUMBER 75C401 AND FOLLOW-
ING APPEAL TO THE UNITED STATES COURT OF APPEALS, SECOND
CIRCUIT, UNITED STATES COURTHOUSE, FOLEY SQUARE, NEW YORK
UNDER DOCKET NUMBER 77-6030

CHARGES IN THIS COMPLAINT ARE SPECIFIED BELOW:

1. LIBEL
2. DEFEMINATION OF CHARACTER IN LIBEL
3. MITIGATION OF FRAUD
4. FRAUD
5. SUBSTITUTION OF CLAIMANTS DISABILITY CLAIM
6. REDUCTION OF CLAIMANTS ELIGIBILITY TIME

AMOUNTS DEMANDED BY PLAINTIFF: NOT LESS THAN
\$12,000,000.00, TWELVE MILLION DOLLARS.

1. THE PLAINTIFF MAKES REFERENCE TO HIS ALLEGATIONS OF LIBEL AS SPECIED IN THE BUREAU OF HEARINGS AND APPEALS DECISION DATED MAY 19, 1977, PAGE 8, ITEM 6, WHEREIN IS INTRODUCED THE MENTAL DISABILITY SCHIZOPHRENIA, WHICH IS A MOST SERIOUS MENTAL DISABILITY.

THE PLAINTIFF RESENTS THIS SUDDEN ACCUSATION IN THE MOST SERIOUS FASHION IMAGINABLE.

THE DISABILITY MANIFESTS ITSELF WITH A LOSS OF MEMORY, INABILITY TO TELL RIGHT FROM WRONG, SOMETIMES ACCOMPANIED WITH ILLUSIONS.

THE PLAINTIFF HEREBY STATES THAT HE IS NOT SCHIZOPHRENIC, NEVER HAS BEEN SCHIZOPHRENIC, NOR DOES PLAINTIFF ANTICIPATE ANY MENTAL DISABILITY OF THE LIKE.

PLAINTIFF IS A GENTILE, IF THE COURT WOULD LOOK IN THE APPROPRIATE DICTIONARY, THE COURT WILL FIND THAT GENTILES ARE A RACE OF PEOPLE ORIGINATING IN ITALY AND FRANCE.

DUE TO THE STRUCTURE OF GENTILES, GENTILES ARE NOT PRONE TO SCHIZOPHRENIA. SHOULD THE COURT TAKE THE TIME TO FIND OUT ABOUT GENTILES AND SCHIZOPHRENIA, THE COURT WILL FIND NIL AS THE ANSWER.

2. PLAINTIFF MAKES REFERENCE TO HIS ALLEGATIONS OF DEFAMATION OF CHARACTER IN LIBEL AS SPECIFIED IN THE BUREAU OF HEARINGS AND APPEALS DECISION DATED MAY 19, 1977, PAGE 8, ITEM 6 WHEREIN IS INTRODUCED THE CONDITION OF PARANOIA, WHEREIN IS MEANT THAT PLAINTIFF IS SUFFERING OBSESSIONS

OR DELUSIONS OR SYSTEM OF DELUSIONS WHICH DOMINATE WITHOUT DESTROYING THE MENTAL CAPACITY, ALTHOUGH SUBJECT TO PERVERTED IDEAS, FALSE BELIEFS AND UNCONTROLLABLE IMPULSES. FURTHER IS STATED THAT THIS MENTAL CONDITION HAS ERODED THE CLAIMANT'S ABILITY TO ENGAGE IN ANY FORM OF FUNCTIONAL ACTIVITY ON ANY SUSTAINED BASIS.

THE PLAINTIFF HEREBY STATES NOT AT ANY TIME HAS PLAINTIFF SUFFERED FROM PARANOIA, PARANOID CONDITIONS COMPLETELY IN THE BROADEST TERMS OF THE MEANING OF PARANOIA. NOT AT ANY TIME HAS PLAINTIFF SUFFERED PARANOIA IN THE MOST STRICTEST SENSE OF THE COMPLETE DEFINITION OF PARANOIA.

3. PLAINTIFF MAKES REFERENCE TO HIS ALLEGATIONS OF THE MITIGATION OF FRAUD WHEREIN THE FINDINGS OF THE DECISION ITEM 6 BY THE BUREAU OF HEARINGS AND APPEALS WAS NOT AN ISSUE AT ANY TIME. PLAINTIFF ENTERED A CLAIM STATED THAT PARAXMEL ATRIAL TACHYCARDIAC WAS THE DISABILITY. THIS DISABILITY WAS BORNE OUT BY DOCTOR ANTHONY N. VALLETTA, ATTENDING DOCTOR AND SUBSEQUENT TREATMENT BY SAME,

4. PLAINTIFF STATES THAT THE DECISION IN ITSELF IS A FRAUD IN THAT THE CONCEALMENT OF VITAL FACTS IN THE DISABILITY CLAIM WERE NEGATED AND NOT FUNCTIONALLY INTRODUCED INTO THE FINDINGS OF THE BUREAU OF HEARINGS AND APPEALS.

THERE IS WITHOUT A DOUBT AN INTENTIONAL — — — — —

PERVERSION OF THE TRUTH IN THIS DECISION OF THE MOST SERIOUS NATURE & C. THE PLAINTIFF HAD A HEART ATTACK FIRST SUSTAINED ON OCT 9, 1977, NOT ANY BRAIN DISABILITY. ONE DISABILITY IS NOT REMOTELY CONNECTED WITH THE STATED LIBEL.

FURTHER, ITEM 7 INDICATES THAT THE MENTAL IMPAIRMENT ESTABLISHED A RIGHT TO A PERIOD OF DISABILITY COMMENCING ON OCT 9, 1973. THIS IS OUT AND OUT FRAUD.

PLAINTIFF STATES THAT IN THE CONCLUSIONS OF THE ADMINISTRATIVE LAW JUDGE THAT AN ILLEGAL SUBSTITUTION OF CLAIMANTS DISABILITY CLAIM HAS OCCURRED.

NOWHERE IN ANY WRITTEN CLAIM BY PLAINTIFF HAS THERE BEEN ANY ALLEGATIONS AS STATED IN THE CONCLUSIONS OF ADMINISTRATIVE LAW JUDGE.

THE SUDDEN INTRODUCTION OF SCHIZOPHRENIA AND PARANOIA MAKING REFERENCE TO COMMENCING WITH OCT 9, 1973 IS OUTLANDISH AND FRAUDULENT.

6. PLAINTIFF STATES ON THE AFORESTATED BUREAU OF HEARINGS DECISION PAGE 9 PARAGRAPH TITLED RECOMMENDED DECISION WHEREBY IS STATED THAT DISABILITY BENEFITS ARE ENTITLED FROM OCT 9, 1973 TO DEC 31, 1976 WHEN LAST HE WAS ELIGIBLE THEREOF.

PLAINTIFF HAS BEEN EMPLOYED IN ONE CAPACITY OR ANOTHER SINCE THE AGE OF 16 YEARS AND HAS PAID SOCIAL SECURITY TAX SINCE THAT AGE. THIS MEANS THAT PLAINTIFF HAS PAID TAXES FOR A PERIOD OF 27 YEARS.

PLAINTIFF STATES THAT TAXES PAID FOR 27 YEARS IS A VERY LONG TIME. FURTHER, PLAINTIFF HAS NOT EARNED ANY WAGES OR RECEIVED ANY FEES FOR LABOR SINCE HIS DISABILITY BEGAN.

HOW IS PLAINTIFF TO PAY ANY SOCIAL SECURITY TAX? ON WHAT AMOUNT OF MONIES EARNED DOES PLAINTIFF PAY TAXES TO REMAIN ELIGIBLE TO RECEIVE COMPLETE COVERAGE FOR DISABILITY?

PLAINTIFF EXPECTS THE COURT AND A JURY TO AGREE WITH HIM IN HIS STATED BRIEF BECAUSE THE TRUTH AND THE FRAUDS ARE EXTREMELY APPARANT.

Anthony P. Cozza

ANTHONY P. COZZA
2332-85th STREET
BROOKLYN, N.Y. 11214

EXHIBITS ATTACHED

6/29/77 *Dolores M. Goettisheim*

DOLORES M. GOETTISHEIM
NOTARY PUBLIC, State of New York
No. 24-1467200
Qualified in Kings County
Cert. filed in New York County
Term Expires March 30, 1982

DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS

Name and Address of Claimant:

Mr. Anthony P. Cozza
2332 85 Street
Brooklyn, N.Y. 11214

NOTICE OF FAVORABLE DECISION
PLEASE READ CAREFULLY

The enclosed decision is favorable to you, either wholly or partly. If you are satisfied with this decision, there is no need for you to do anything at the present time. Further action on the decision will proceed automatically.

If you disagree with the decision, you have the right to request the Appeals Council to review it within 60 days following the date shown below. A request for review may be filed by you (or your representative) at your local social security office, or it may be filed with the hearing office or the Appeals Council.

The Appeals Council may decide on its own motion within 90 days following the date shown below to review and possibly to change the decision. If the Appeals Council decides to review the decision on its own motion, you will be notified promptly.

Unless you file a timely request for review by the Appeals Council or unless the Appeals Council reviews the decision on its own motion, you may not obtain a court review of your case under sections 205(g), 1631(c)(3), and 1869(b) of the Social Security Act.

This notice and enclosed copy of
decision mailed

19 May 1977

CC:

Name and Address of Representative:

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DEPARTMENT OF
HEALTH, EDUCATION, AND WELFARE
SOCIAL SECURITY ADMINISTRATION
BUREAU OF HEARINGS AND APPEALS
RECOMMENDED DECISION
XDECISION

In the case of

Anthony P. Cozza
(Claimant)

(Wage Earner)(Leave blank if same as above)

Claim for

Period of Disability and
Disability Insurance Benefits

082-24-3104

(Social Security Number)

The matter is before an Administrative Law Judge of the Social Security Administration pursuant an order of the Appeals Council dated October 29, 1976 which directed that a supplemental hearing be held. The remand followed an order of the United States District Court for the Eastern District of New York in Civil Action No. 75C401. In the order of remand aforesaid, the Appeals Council directed the Administrative Law Judge to provide to the claimant an adequate opportunity to comment on any additional evidence, to submit material evidence, to raise pertinent objections, to examine and cross-examine witnesses, and upon the close of the supplemental hearing so held, the Judge was directed to propose findings of fact and conclusions of law, and to return the case to the Appeals Council with a recommended decision, a copy of which was to be sent to the claimant. Further proceedings thereafter were to be filed with the Appeals Council, after which the record was to be reviewed and the Appeals Council issue its decision.

In preparation for the supplemental hearing, the Administrative Law Judge directed a psychiatric consultative examination and a psychological evaluation. The claimant was also examined in consultation by a Board-certified Internist, specializing in cardiovascular disease. Upon the incoming of all of the foregoing reports the supplemental hearing was directed to be held and was convened on the 12th day of April, 1977. Present thereat was the claimant without representation or assistance, he having declined an opportunity to be represented and advised. At the invitation of the Administrative Law Judge, Dr. Anneliese A. Pontius was present and served as the Judge's Medical Advisor. The supplemental hearing was held at the office of the Bureau of Hearings and Appeals, 189 Montague Street, Brooklyn, New York.

ISSUES

The application under consideration raises two basic issues, i.e.:

- (1) Is the claimant entitled to a period of disability under the provisions of Section 216(i) of the Act;
- (2) Is the claimant entitled to disability insurance benefits in accordance with the provisions of Section 223(a) of the statute.

There are more specifically, five ancillary issues to be determined:

- (a) Did the claimant have the required insured status under the law, and, if so, as of what date;
- (b) What is the nature and extent of the claimant's impairment or impairments;
- (c) Has or have the claimant's impairment or impairments lasted or can it or they be expected to last for a continuous period of at least twelve months or can it or they expected to result in death;
- (d) Does the claimant have the ability to engage in substantial, gainful activity since the impairment or impairments began;
- (e) When did the claimant's disability, if any, begin.

LAW AND REGULATIONS

Since disability is a statutory concept, it is relevant to consider the definition thereof which is incorporated in the law. Section 223(d) of the Act, (42 USC 423(d)) provides:

- (1) "The term 'disability' means --
 - (A) inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months. . .

(2) For purposes of paragraph (1) (A) ---

(A) an individual . . . shall be determined to be under a 'disability' only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial, gainful work which exists in the national economy . . .

(3) For purposes of this subsection, a 'physical or mental impairment' is an impairment that results from anatomical, psychological, or physiological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques . . .

(5) An individual shall not be considered to be under disability unless he furnishes such medical and other evidence of the existence thereof as the Secretary may require."

The Congress has authorized the Secretary to establish regulation to implement the statute (Section 205(a), SSA, 42 USC 405(a)). Under this authorization, the Secretary has promulgated, inter alia, Section 404.1501(c) of the Regulation No. 4 (20 CFR 404.1501(c)), which reads as follows:

"Definition of Impairments. A 'physical or mental impairment' is an impairment that results from anatomical, physiological, or psychological abnormalities which are demonstrable by medically acceptable clinical and laboratory diagnostic techniques. Statements of the applicant, including his own description of his impairments (symptoms) are, alone, insufficient to establish the presence of a physical or mental impairment or impairments."

The Secretary has also established criteria for medical evidence in his Regulation No. 4 (Section 404.1524; 20 CFR 404.1524). Therein, the Secretary has stated that medical evidence of an individual's mental or physical impairment includes a report signed by a duly licensed physician, as well as other forms of evidence therein mentioned and said forth.

However, the Secretary has reserved for himself the function, and responsibility of determining the existence of an individual's disability. So in Section 404.1526 of his Regulation No. 4, (20 CFR 404.1526), he has stated:

"The function of deciding whether or not an individual is under a disability is the responsibility of the Secretary. A statement by a physician that an individual is, or is not, 'disabled', 'permanently disabled', 'totally disabled', 'totally and permanently disabled', 'unable to work', or a statement of similar import, being a conclusion upon of the ultimate issue to be decided by the Secretary, shall not be determinative of the question of whether or not an individual is under a 'disability'. The weight to be given such physician's statements depends on the extent to which it is supported by specific and complete clinical findings and is consistent with other evidence as to the severity and probable duration of the individual's impairment or impairments."

EVIDENCE CONSIDERED

The Administrative Law Judge has carefully considered all of the testimony adduced at the hearing as well as the documents received in evidence according to the List of Exhibits annexed to and made a part of this decision (as well as the arguments of counsel, if any, during and at the conclusion of the hearing).

EVALUATION OF THE EVIDENCE

Mr. Cozza was duly sworn and testified that he had been born in Brooklyn, New York on January 31, 1931 and that he was 46 years of age at the date of the supplemental hearing. He stated he had a high school education and had received special training at an R.C.A. Institute, in electronic engineering. According to the claimant, he had attended the City College of The City University of New York for approximately five years as a non-matriculant.

It was asserted by the claimant that he had started working when he was sixteen years of age. For three years he worked as a page in the New York Public Library System. For six years thereafter he was employed as a repairman by Air-King Television. He served in Korea for two years and received an Honorable Discharge. His rank on discharge was that of a Sergeant. In the Army, he had been assigned duty apparently in the Quartermaster's Corps as a Supply Sergeant.

Following his Army service, he went to work for the Columbia Broadcasting System as a technician, earning about \$40.00 a week. He then was hired by Edison Voicewriter as a bench repairman, earning about \$85.00 a week. By R.C.A., he was employed to repair test equipment which was utilized in connection with defense electronic production. For two years he worked there, earning between \$95 and \$105 a week. He then went to work for Design Service as a so-called "systems design engineer" earning \$135 to \$150 a week. This employment lasted some 3½ years. Then he was hired by the Gimbels Department Store as a Collector of bad accounts and later, he worked for the Sterns Department store, now closed, in Manhattan. In the meantime, he stated, he had studied at the La Salle Extension University, taking a Correspondence Law Course.

Employment followed with Barclay's Bank in Manhattan, in its Reconciliation Unit. He was then hired as a cost analyst by National Utilities Service, where he worked between 1968 and 1971, earning about \$155 a week. He organized recruitment service in October of 1973 and he continued to work until he had what he described as a "Heart Attack" and for which he was treated at the Coney Island Hospital Emergency Room.

Apparently no in-patient hospital stay was required and the claimant was sent home to be treated by a Dr. Anthony Valletto, under a diagnosis of Paroxysmal Auricular Tachycardia. For approximately one year following the so-called "Heart Attack" he saw Dr. Valletto about once a week; and thereafter, once every two weeks, after which he saw the doctor at irregular intervals and since, for financial reasons, has stopped seeing him at all.

The claimant describes his problems as involving shortness of breath, weakness in his legs, and an inability to concentrate, as, for example, to stay with a test through completion. Physical exertion is limited to walking for a distance of about half a mile on a straight surface after which significant shortness of breath is experienced. Claimant reports a recent weight loss in a range of 40 to 60 pounds. Previously, the claimant, who has never married, lived with his mother but now, since her recent death, he lives alone. He has applied for a disability pension from the Veterans Administration but has received no decision with respect thereto. So long as the claimant's mother lived, the family unit had been supported in part by the Social Security Retirement check the claimant's mother received, in part by rent money from a housing unit in a house owned by the claimant, and in part by dipping into the claimant's accumulated funds.

The medical evidence is supplied by Dr. Valletto who has certified that the claimant had been under his care for "acute paroxysmal auricular tachycardia" since October 18, 1973. It was stated by Dr. Valletto that the claimant was being medicated with Quinidine and sedatives. The doctor further certified that in his judgment, by reason of the cardiac impairment, the claimant was unable to work.

A subsequent certification by Dr. Valletto suggests that Mr. Cozza had been prevented from working since October 9, 1973 when he had his first severe attack. According to the doctor, claimant has had many such episodes since, which prevented him from working despite the fact it had been noted on July 1, 1974 that his physical condition had greatly improved and Dr. Valletto expected he would be able to return to work by September of 1974 (Exhibit 14).

On April 23, 1975 Dr. Valletto expressed the continued belief that Anthony P. Cozza suffered from paroxysmal auricular tachycardia and that though there was some improvement, in his judgement the claimant was still unable to work. On March 3, 1976, (Exhibit 20) Dr. Valletto noted remissions and exacerbations with stress being a triggering factor in exacerbation of the disabling condition.

On the other hand, a Dr. Milder, on the basis of a consultative examination held on January 11, 1977, found that there was no cardiac chamber enlargement, lungs were clear and the sinus rhythm was regular as shown by resting electrocardiogram. Following the established protocol for a Master's procedure, no abnormality was ascertained. The interpretation was a negative Master's exercise test. Nevertheless, a final diagnosis of paroxysmal atrial tachycardia of unknown etiology was established.

A clinical psychologist saw the claimant on January 12, 1977. He found the claimant unwilling to cooperate in a full psychological work-up. On the basis of observation, however, without attempting to offer a diagnostic impression, it was noted that the claimant was tense, irritable, just barely able to contain his anger. According to the examiner, claimant's ability to think clearly or to behave appropriately has been significantly impaired. It was suggested that despite what the claimant alleged to be "a near fatal heart condition", he continued to smoke excessively. There was, in the examiner's opinion, a certain paranoid flavor to the claimant's ideation.

When he was seen in psychiatric consultation, on December 31, 1976, a diagnosis of Schizophrenia of the Paranoid type was established. The problem was found to be chronic, and

prognosis was felt to be poor. It is clear that the suggestion he had a psychiatric problem was one which the claimant found absolutely insupportable.

Dr. Anneliese Pontius was duly sworn and qualified. From her examination of the medical evidence, she found evidence the claimant had suffered from Paroxysmal Atrial Tachycardia which apparently had improved. She defined the condition as "overexcitability" of the cardiac system.

Referring to Dr. Paley's report (Exhibit 25), Dr. Pontius noted the diagnosis of Paranoid Schizophrenia as indicated by the claimant's defensiveness and utter vulnerability. It was her judgment that the claimant could not maintain interpersonal relationships on any reasonable basis. Dr. Pontius suggested that the condition as diagnosed was analagous to the impairments described in the Secretary's Listing of Impairments in the Appendix to Subpart P of Regulation No. 4 in that there was clearly manifest a condition described as Schizophrenia with delusional thought content, regressive activity, inappropriate behavior and focus on non-essential features in any situation with which the claimant was confronted. The doctor's judgement was that by reason of the impairment so described, in the absence of further data, from a medical point of view, the claimant was unable to tolerate the stress of normal industrial environment and was wholly unable to function on any sustained and regular basis in competitive work activity.

Observation of the claimant at the hearing and a review of the testimony and statements he made thereat, gives significant confirmation of the evaluation made both by Dr. Paley and by Dr. Pontius. If the opinion of the medical experts is to be accepted, (it should be noted there is no reason to doubt the opinion so expressed), the claimant must be found to have lost the ability to engage in functional activity on any sustained basis by reason of a medically determinable mental impairment. The degree in which his physical impairment, if indeed such exists, has contributed to the development of the mental problem is not really germane. The fact remains that whatever the problem might be, the claimant has been deprived of an ability to engage in significant functional activity on any sustained and regular basis and is therefore disabled within the meaning of the statute.

PROPOSED
FINDINGS

The Administrative therefore finds the following:

1. Anthony P. Cozza, the claimant, is a fully insured individual who last met the special earnings requirements of the statute for eligibility for disability insurance benefits entitlement through December 31, 1976.
2. The claimant filed an application for title II benefits based upon disability on March 26, 1974 alleging an onset of disability on October 9, 1973 by reason of a "heart condition".
3. The evidence establishes the claimant has a high school education has had special technical training and experience beyond the high school level and has been exposed to courses at the college level on a non-matriculated basis.
4. Work experience has included such activities as television repairman, electrical and electronics bench assembly work, sound technician, credit collection, employment recruitment and research and consultant services.
5. Claimant's allegation of an impairment by reason of a heart condition which constitutes disability within the meaning of Section 223(d) of the statute is not borne out by the objective data in the record despite the stated opinion of his treating physician that he thereby has been unable to engage in functional exertional activity.
6. There is evidence in the record, however, that the claimant suffers from a significant mental impairment which has been diagnosed as Schizophrenia of the Paranoid type and which has almost completely eroded the claimant's ability to engage in any form of functional activity on any sustained basis.
7. By reason of the mental impairment aforesaid, the claimant has established a right to a period of disability commencing with October 9, 1973, the date when his private physician, Dr. Anthony Valletto, first certified he had started treatment of the claimant.

8. The claimant has continued to be under a disability as defined in Section 223(d) of the Social Security Act, as amended, by reason of a mental condition found by competent medical testimony to be analagous to the condition described in Section 12.03 of the Listing of Impairments, constituting the Appendix to Subpart P of the Secretary's Regulation No. 404.

RECOMMENDED DECISION

The Administrative Law Judge therefore recommends, on the strength of the testimony adduced at the supplemental hearing, that Anthony P. Cozza, the claimant, A/N 082-24-3104, on the basis of his application filed March 26, 1974, is entitled to a period of disability commencing with October 9, 1973, and to disability insurance benefits in accordance with the provisions of Section 216(i) and 223(a), respectively, of the Social Security Act, as amended, the claimant having demonstrated his continued eligibility for such benefits through December 31, 1976 when last he was eligible therefor.

Dated: 19 May 1977
Brooklyn, New York

Jack H. Hantman
Jack H. Hantman
Administrative Law Judge